

BEFORE THE BUSINESS RESOURCES DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
adoption of New Rules I) PROPOSED ADOPTION
through XVI pertaining to the)
award of grants and loans)
under the Big Sky Economic)
Development Program)

TO: All Concerned Persons

1. On October 13, 2005, at 1:30 p.m., a public hearing will be held in Room 228, 301 South Park Avenue, Helena, Montana, to consider the adoption of new rules I through XVI pertaining to the award of grants and loans under the Big Sky Economic Development Program.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Business Resources Division no later than 5:00 p.m. on October 6, 2005, to advise us of the nature of the accommodation that you need. Please contact Quinn Ness, Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone (406) 841-2758; facsimile (406) 841-2731; TDD (406) 841-2702; e-mail to quiness@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Account" means the big sky economic development special revenue account established in 90-1-205, MCA.

(2) "Award" means a grant or loan under this program to an eligible applicant.

(3) "Basic sector company" means:

(a) a business that generates more than 50% of their total dollar sales from outside Montana;

(b) more than 50% of their product or services enters into the production of products exported outside of Montana; or

(c) a business defined as a "value-adding business" by the Montana board of investments.

(4) "Big sky economic development fund" means the fund established in 17-5-703, MCA.

(5) "Business" means the business enterprise for which the project is being undertaken.

(6) "Certified regional development corporation" means the organization provided for in 90-1-116, MCA.

(7) "Department" means the department of commerce provided for in 2-15-1801, MCA.

(8) "Director" means the director of the department of commerce.

(9) "Economic development organization" means:

(a) a private, nonprofit corporation, as provided in Title 35, chapter 2, MCA, that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 USC 501(c)(3) or 501(c)(6);

(b) an entity certified by the department under 90-1-116, MCA;

(c) an entity established by a local government; or

(d) an entity actively engaged in economic development and business assistance work in a region of the state.

(10) "Eligible economic development organization" means an economic development organization that is located in a county that is not part of a certified regional development corporation region, and which meets the eligibility requirements established by the department and published by it in the Big Sky Economic Development Fund Application Guidelines dated 2006.

(11) "Eligible job" means a new full-time job that provides wages that meet or exceed the current average weekly wage of the county in which the employee is to be principally employed.

(12) "Full-time job" means a job that provides at a minimum, an average of 35 working hours per week on an annual basis.

(13) "Industrial development" means the support of the act or the process of enhancing the business environment for productive, profit-making enterprises.

(14) "Local government" means a tribal government, county, consolidated government, city, town, or district or local public entity with the authority to spend or receive public funds.

(15) "Montana main street program" means the state program established in 90-1-151, MCA, and administered by the department of commerce that coordinates technical assistance and funding resources for revitalizing and enhancing the economic viability of historic and traditional downtown districts in communities across the state.

(16) "Program" means the big sky economic development program established in 90-1-201, MCA.

(17) "Project" means an economic development project for which assistance is requested under this program.

(18) "Tribal government" means any state or federally recognized Indian tribe within the state of Montana.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

NEW RULE II SCOPE AND PURPOSE OF ADMINISTRATIVE RULES

(1) These administrative rules apply to funds deposited in the account that are statutorily appropriated for

distribution to local governments, certified regional development corporations and eligible economic development organizations.

(2) These administrative rules provide the department with a structure to administer the account and to negotiate the financial terms and conditions under which funds may be allocated from the account.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

NEW RULE III PURPOSE OF BIG SKY ECONOMIC DEVELOPMENT PROGRAM (1) Economic development is a public purpose and the purpose of the program is to assist economic development activities in Montana that:

- (a) create good-paying jobs for Montana residents;
- (b) promote long-term, stable economic growth in Montana;
- (c) encourage local economic development organizations;
- (d) create partnerships between the state, local governments, and local economic development organizations that are interested in pursuing similar economic development goals;
- (e) retain or expand existing businesses; and
- (f) provide a better life for future generations through greater economic growth and prosperity in Montana.

(2) The program seeks to:

- (a) encourage and attract sustainable investments and good-paying jobs to Montana communities;
- (b) stimulate the state economy and local economies; and
- (c) provide resources to enable Montana communities to expand their tax base and improve their general economic health and welfare.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

NEW RULE IV INCORPORATION BY REFERENCE OF RULES GOVERNING SUBMISSION AND REVIEW OF APPLICATIONS (1) The department adopts and incorporates by reference the Big Sky Economic Development Fund Application Guidelines dated 2006 as rules governing the submission and review of applications under the program. A copy of the guidelines may be obtained from the Department of Commerce, P.O. Box 200505, Helena, MT 59620-0505.

(2) The guidelines incorporated by reference relate to the following:

- (a) program inquiries;
- (b) program funding;
- (c) application deadlines;
- (d) eligibility;
- (e) program requirements;
- (f) penalties;
- (g) application procedures;
- (h) review of applications; and

(i) procedures for accessing funds.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

NEW RULE V DISTRIBUTION OF FUNDS FROM THE BIG SKY ECONOMIC DEVELOPMENT ACCOUNT (1) Of the funds that are deposited in the account that are not used for administrative expenses:

(a) 75% must be allocated for distribution to local governments to be used for job creation projects; and

(b) 25% must be distributed to certified regional development corporations and eligible economic development organizations for economic development planning or capacity building activities.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

NEW RULE VI ENTITIES BARRED FROM RECEIVING FUNDS

(1) The department may not make a loan or award a grant from the account to any individual, organization, or governmental unit that is currently in default of the terms or conditions of any loan or grant contract previously executed with the department.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

NEW RULE VII FORM OF FINANCIAL ASSISTANCE

(1) Financial assistance provided to local governments from the account shall be in the form of negotiated grants and loans for economic development projects.

(2) Financial assistance provided to certified regional development corporations and other eligible economic development organizations from the account shall be in the form of negotiated grants for economic development planning or capacity building activities.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

NEW RULE VIII MAXIMUM AWARD AMOUNT (1) Maximum award amounts to local governments may not exceed \$5,000 for each eligible job to be created by an eligible business.

(2) In appropriate circumstances and with supporting documentation, the department may establish award amounts to local governments that are less than \$5,000 for each new eligible job to be created by an eligible business.

(3) The eligible jobs used as the basis for determining the award amount shall be net new positions to the business associated with the project in Montana and shall not include jobs transferred from any existing Montana operations of the business or any related entity.

(4) Maximum award amounts to certified regional development corporations and other eligible economic development organizations shall be established and published by the department in the Big Sky Economic Development Fund Application Guidelines dated 2006.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

NEW RULE IX AWARD LIMITATIONS (1) An award under the program may not be used for a project that will result in the transfer or relocation of jobs from one geographic area of Montana to another geographic area of Montana.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

NEW RULE X AWARD MATCH REQUIREMENT (1) Local governments shall provide and document equal matching funds for all awards allocated under the program.

(2) The private investment of funds by the business associated with the project may be considered as the local government's matching funds by the department.

(3) Certified regional development corporations and other eligible economic development organizations are not required to document or provide matching funds for awards allocated under the program.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

NEW RULE XI ELIGIBLE USES OF AWARDS (1) Uses of awards to local governments for eligible businesses shall include, but are not limited to, grants or loans for:

- (a) land acquisition;
- (b) site preparation;
- (c) infrastructure improvements;
- (d) purchase or improvement of buildings, machinery and equipment;
- (e) workforce training;
- (f) a reduction in the interest rate of a commercial loan for the expansion of a basic sector company;
- (g) a grant or low-interest loan for relocation expenses for a basic sector company; and
- (h) rental assistance or lease buy-downs for a relocation or expansion project for a basic sector company.

(2) Uses of awards to certified regional development corporations and other eligible economic development organizations shall include, but are not limited to, the following economic development planning or capacity building activities:

- (a) support for business improvement districts and central business district redevelopment;
- (b) industrial development;

- (c) feasibility studies;
- (d) creation and maintenance of baseline community profiles;
- (e) matching funds for federal funds, including but not limited to brownfields funds and natural resource damage funds; and
- (f) main street program activities.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

NEW RULE XII ELIGIBLE BUSINESS (1) Basic sector businesses and other businesses identified by the department in the Big Sky Economic Development Fund Application Guidelines dated 2006 are eligible for financial assistance from funds that are awarded to local governments under this program.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

NEW RULE XIII APPLICATION REVIEW PROCEDURE (1) A department committee will review formal applications and make a funding recommendation to the director, who shall make the final decision on the award of funding.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

NEW RULE XIV AWARD DECISION CRITERIA (1) In exercising the discretion required to negotiate and allocate awards from the account to local governments, the criteria considered by the department may include:

- (a) the economic impact of a project in the community, region and/or state;
 - (b) the creation of quality jobs; and
 - (c) the feasibility of the project.
- (2) Special consideration may be given by the department to businesses that:
- (a) locate or expand in rural areas and/or areas that have experienced sudden and severe economic disruptions;
 - (b) create a relatively large number of eligible jobs;
 - (c) have agreed to negotiate special hiring arrangements for disadvantaged and/or lower income persons in connection with a project; or
 - (d) bring an exceptional new technology to the state, and are recognized as a national or international leader in its industry.

(3) In exercising the discretion required to negotiate and allocate awards from the account to certified regional development corporations and other eligible economic development organizations, the criteria considered by the department may include:

- (a) the potential for the activity to provide for economic development success;
- (b) the amount of state, federal and private funds leveraged;
- (c) the community and regional economic need; and
- (d) the economic development planning or capacity building activity as a new "best practice" in economic development at the local, regional, state or national level.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

NEW RULE XV ABILITY TO REQUEST ADDITIONAL INFORMATION

(1) The department may require additional information to be provided from the local government, certified regional development corporations, or other eligible economic development organizations, or from a business associated with a project, beyond that which may be contained in the application forms or specified in these rules.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

NEW RULE XVI FAILURE TO PROVIDE INFORMATION

(1) Failure to provide information requested, as well as failure to provide requested information in sufficient detail, may serve as grounds for rejecting an application.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

4. STATEMENT OF REASONABLE NECESSITY: Pursuant to 17-5-703 and 90-1-201, MCA, et seq. creating the Big Sky Economic Development Fund and assigning the administration of the fund to the Department of Commerce, the department is proposing these new rules I through XVI to implement the Big Sky Economic Development Program. The department determined that it is reasonably necessary to propose these new rules to, among other things, establish the program, define relevant terms, incorporate application guidelines by reference, establish the distribution channels of available funds, and set the limitations on the award of available funds. The new rules are also reasonably necessary because the legislature mandated that the department adopt rules to implement the Big Sky Economic Development Program in 90-1-204, MCA.

5. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Quinn Ness, Business Resources Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505, by facsimile to (406) 841-2731, or by e-mail to guness@mt.gov to be received no later than 5:00 p.m., October 21, 2005.

6. An electronic copy of this Notice of Proposed Adoption is available through the Department's site on the World Wide Web at <http://commerce.mt.gov>. The Department strives to make the electronic copy of this Notice of Proposed Amendment conform to the official version of the Notice as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Department of Commerce maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Business Resources Division administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505 or by phone at (406) 841-2732, or may be made by completing a request form at any rules hearing held by the agency.

8. Marty Tuttle, chief legal counsel, has been designated to preside over and conduct this hearing.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

DEPARTMENT OF COMMERCE
BUSINESS RESOURCES DIVISION

By: /s/ ANTHONY J. PREITE
ANTHONY J. PREITE, DIRECTOR
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State September 12, 2005.